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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,911	02/17/2004	L. Ross Allen	47911/269346	8986

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BANK OF AMERICA PLAZA
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CHARLOTTE, NC 28280-4000

EXAMINER

PAINTER, BRANON C

ART UNIT	PAPER NUMBER
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3609

MAIL DATE	DELIVERY MODE
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08/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/779,911

Applicant(s)

ALLEN, L. ROSS

Examiner

Branon C. Painter

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 02/17/04 and 06/13/05.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statements (IDS) submitted on 02/17/04 and 06/13/05 are being considered by the examiner.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 19 and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The discussions of "trimming" in these claims are vague and indefinite. It is unclear whether the flashing members are to be physically trimmed or altered on-site, or if the flashing is manufactured in such a way that it meets the claim limitations without further alterations. For the purposes of this examination, the examiner presumes the flashing is manufactured to meet these limitations without further on-site alterations.

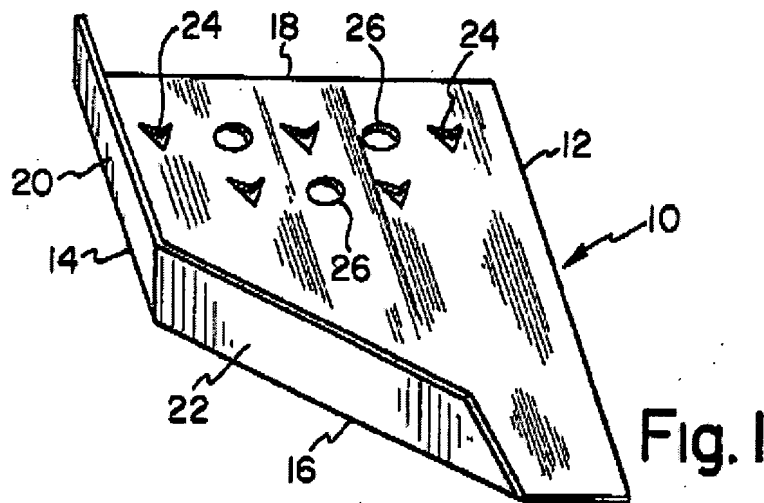
Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

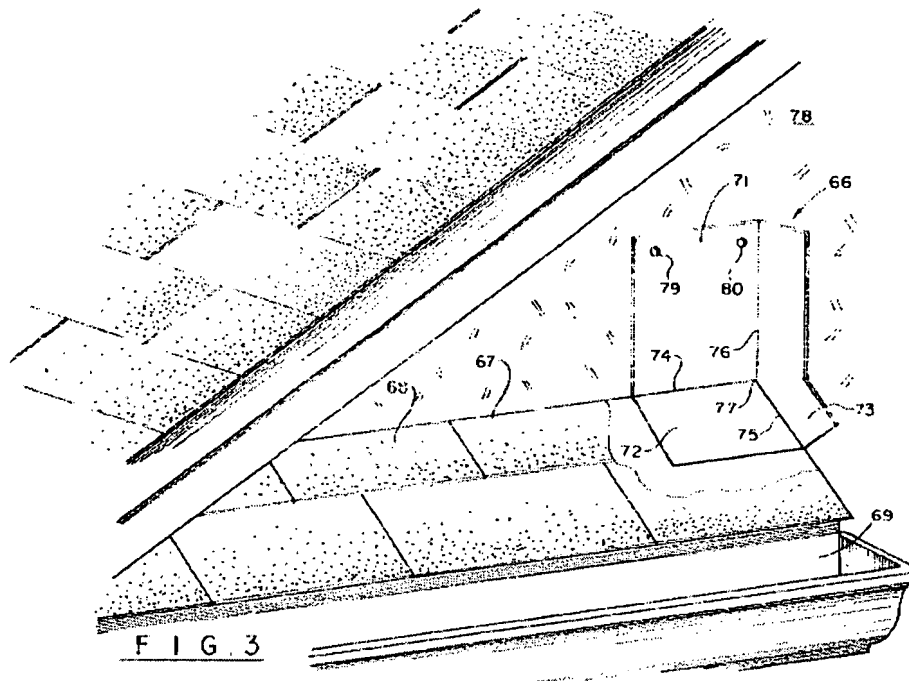
3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Kosar (U.S. Patent No. 4,391,068).
4. Regarding claim 1, Kosar discloses a water deflector having all of the applicant's claimed structure, including:
 - a. "a continuous roof portion configured to be disposed on the roof..." ("base" 12, Fig. 1).
 - b. "...first and second flanges extending perpendicularly from the roof portion to define a continuous passage extending along an intersection of the roof portion to each of the flanges...the first and second flanges defining an obtuse angle therebetween..." ("first & second upstanding lips" 20 and 22, Fig. 1).
 - c. "...wherein the first and second flanges are each adapted to be disposed against the wall with the other flange being configured to direct water flowing along the passage away from the wall." ("first & second upstanding lips" 20 and 22, Fig. 1).
 - d. The examiner notes that applicant has not positively claimed disposition of either the first or second flange against a wall. Rather, only the capability to be disposed against a wall has been claimed. Both flanges disclosed by Kosar are inherently capable of being disposed against a wall, therefore the structure disclosed by Kosar meets all claimed limitations.



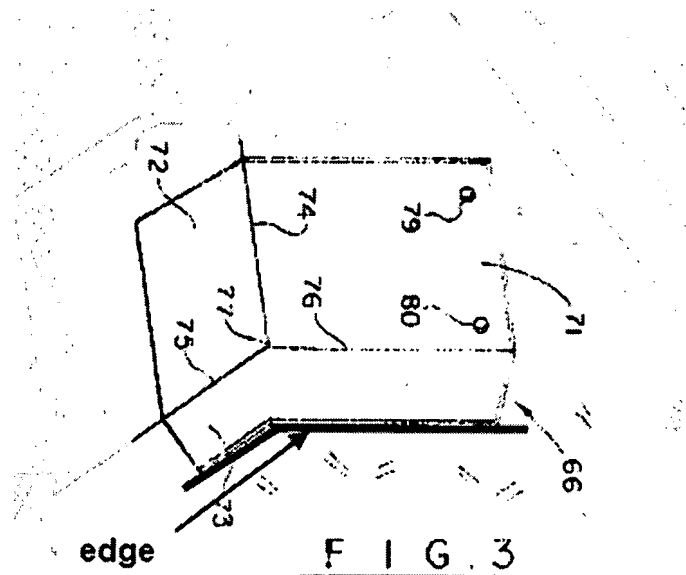
Reproduced from U.S. Patent No. 4,391,068

5. Regarding claim 2, Kosar discloses flanges that each define a planar outer surface directed away from the passage ("first & second upstanding lips" 20 and 22, Fig. 1).
6. Regarding claim 3, Kosar discloses an obtuse angle that is between about 100 and 140 degrees (angle between "first & second upstanding lips" 20 and 22, Fig. 1).
7. Regarding claim 4, Kosar discloses flashing formed from a unitary molded plastic member ("Additionally, the deflector may be molded from a variety of plastics, such as polypropylene, polyethylene...or the like," column 3, lines 41-45).
8. Claims 1, 7, and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Givens (U.S. Patent No. 6,681,530).
9. Regarding claim 1, Givens discloses a flashing having all of the applicant's claimed structure, including:
 - a. "a continuous roof portion configured to be disposed on the roof..." ("panel" 73, Fig. 3).

- b. "...first and second flanges extending perpendicularly from the roof portion to define a continuous passage extending along an intersection of the roof portion to each of the flanges...the first and second flanges defining an obtuse angle therebetween..." ("panels" 71 and 72, Fig. 3).
- c. "...wherein the first and second flanges are each adapted to be disposed against the wall with the other flange being configured to direct water flowing along the passage away from the wall." ("panels" 71 and 72, Fig. 3).
- d. The examiner notes that applicant has not positively claimed disposition of the roof portion against a roof, or of either the first or second flange against a wall. Rather, only the capability to be disposed against a roof or wall has been claimed. The roof portion and flanges disclosed by Givens are inherently capable of being disposed against a roof or a wall, therefore the structure disclosed by Givens meets all claimed limitations.
- e. The examiner further notes the inclusion of examiner amended Fig. 3 below, which rotates the flashing of Givens to orient it in the same manner as applicant's device.



Reproduced from U.S. Patent No. 6,681,530



Reproduced from U.S. Patent No. 6,681,530 (Examiner amended)

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10. Regarding claim 7, Givens discloses a roof portion defining edges opposite the first and second flanges at an angle equal to the obtuse angle of the flanges (angle of "panel" 73, Fig. 3).
11. Regarding claim 8, Givens discloses first and second flanges that are substantially equal in size such that the flashing is substantially symmetric about a plane bisecting the obtuse angle ("panels" 71 and 72, Fig. 3).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosar (U.S. Patent No. 4,391,068) in view of Hunter (U.S. Patent No. 5,894,697).
 - a. Kosar discloses a water deflector as set forth above [claims 1-4].

- b. Kosar does not expressly disclose a stop extending between the first and second flanges forming a channel with the roof portion [claim 5], or that the stop is smaller than the roof portion and disposed between about $\frac{1}{4}$ to 1 inch from the roof portion [claim 6].
- c. Hunter discloses a stop extending between the first and second flanges forming a channel with the roof portion ("double-crimp lip guide" 15, Fig. 2C) [claim 5], or that the stop is smaller than the roof portion and disposed between about $\frac{1}{4}$ to 1 inch from the roof portion ("double-crimp lip guide" 15, Fig. 2C; "There is a longitudinal double-crimp lip guide 15 in the vertical portion 12' approximately one inch above the juncture 11' with vertical portion 12'," column 2, lines 62-64) [claim 6]. Adding a stop as taught by Hunter provides a channel for water to flow through, and blocks debris from falling into said channel.
- d. Kosar and Hunter are analogous art because both are from the field of endeavor of roof flashings.
- e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the water deflector of Kosar with a stop as taught by Hunter in order to provide a channel for water to flow through that is protected from falling debris.

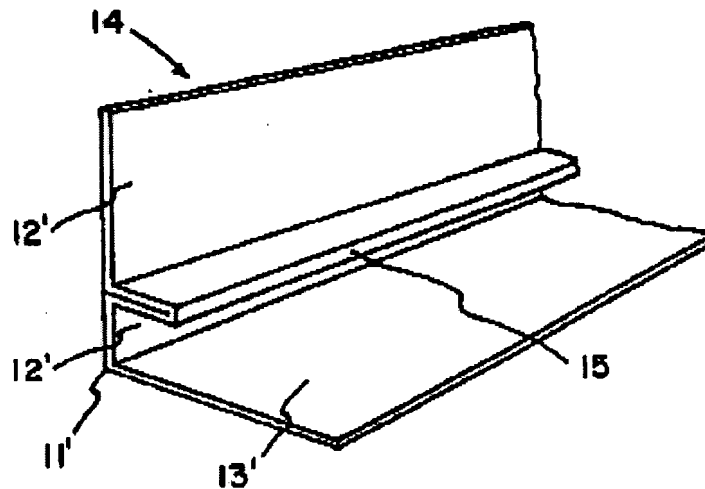


FIG. 2C

Reproduced from U.S. Patent No. 5,894,697

15. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kosar (U.S. Patent No. 4,391,068) in view of Givens (U.S. Patent No. 6,681,530).
- Kosar discloses a water deflector as set forth above [claims 1-4].
 - Kosar does not expressly disclose that the water deflector first and second flanges are at least about 3 inches high.
 - Givens discloses a flashing with a 3 inch high flange ("panel" 73, Fig. 3; "The dimension of [panel 73] is about 3" from the line of intersection 75 and about 3" from the line of intersection 76," column 8, lines 49-53). Sizing the flanges of Kosar to about 3 inches as taught by Givens provides a flange high enough to protect the adjacent wall from damage caused by running water.
 - Kosar and Givens are analogous art because both are from the field of endeavor of roof flashings.

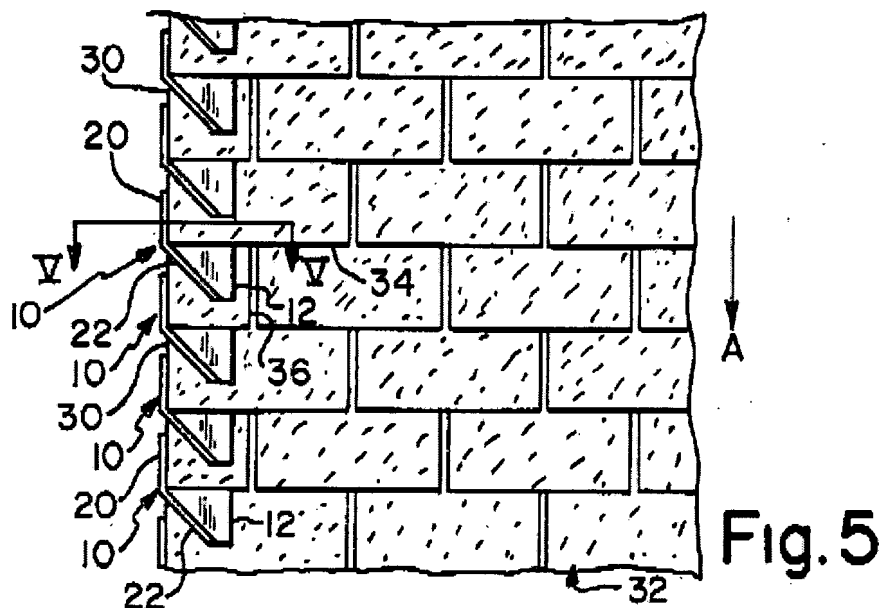
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- e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to manufacture the flanges of Kosar with a height of 3 inches as taught by Givens, in order to provide maximum protection to the underlying wall with minimum aesthetic detriment.
16. Claims 10-14 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosar (U.S. Patent No. 4,391,068) in view of Hickner (U.S. Patent No. 5,675,939).
17. Regarding claim 10:
- a. Kosar discloses a water deflector as set forth above, further including a roof portion disposed against the roof ("base" 12 on "roof" 32, Fig. 5).
 - b. Kosar does not expressly disclose a vertical wall, a roof interfacing with the wall, or that one wall of the flashing is disposed against a vertical wall.
 - c. Hickner discloses a vertical wall (wall with "siding" 31, Fig. 6), a roof interfacing with the wall (roof with "shingle material" 30, Fig. 6), and a flashing with one flange disposed against the vertical wall ("diverter" 34, Fig. 6). Positioning the flashing of Kosar at the interface of a vertical wall and sloped roof as taught by Hickner prevents water from leaking between the two structures.
 - d. The examiner further notes motivation for combining the references as set forth in Hickner: "At the juncture of a sloped roof where it abuts a portion of a vertical wall, there is ordinarily a flashing used to cover the juncture to

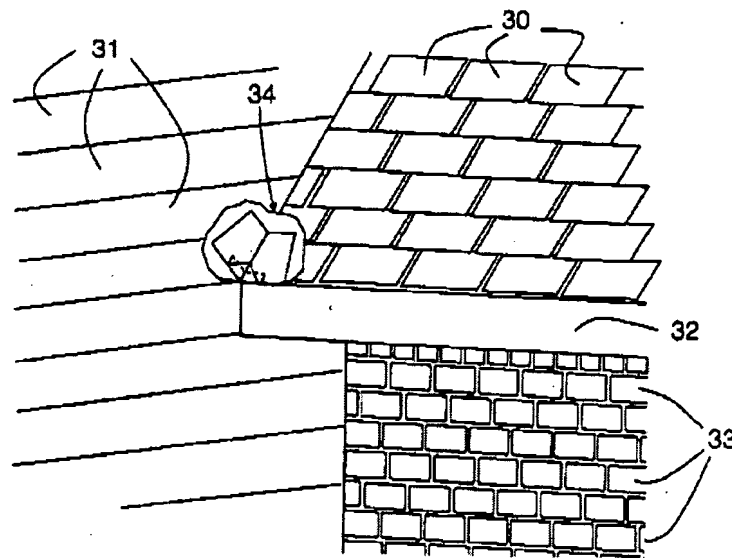
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prevent water from leaking down through the juncture where the vertical wall meets the sloped roof" (column 1, lines 10-14).

- e. Kosar and Hickner are analogous art because both are from the field of endeavor of roof flashings.
- f. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the of water deflector of Kosar at the intersection of a vertical wall and sloped roof as taught by Hickner, in order to prevent water from leaking between the two structures.



Reproduced from U.S. Patent No. 4,391,068

**FIG. 6**

Reproduced from U.S. Patent No. 5,675,939

18. Regarding claim 21, the combination renders the claimed method steps obvious since such would be the logical manner of using the combination.
19. Regarding claims 11 and 22:
- Kosar further discloses a fastener to connect the flashing to the roof ("The holes 26 permit a roofing adhesive or mastic to extend through base 12 and form a continuous bond between the base 12 and adjacent shingles," column 2, lines 45-47) [claim 11].
 - The combination renders the claimed method steps obvious since such would be the logical manner of using the combination [claim 22].
20. Regarding claim 12, Kosar discloses flanges that each define a planar outer surface directed away from the passage ("first & second upstanding lips" 20 and 22, Fig. 1).
21. Regarding claim 13, Kosar discloses an obtuse angle that is between about 100 and 140 degrees (angle between "first & second upstanding lips" 20 and 22, Fig. 1).

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22. Regarding claims 14 and 23:

- a. Kosar discloses flashing formed from a unitary molded plastic member
("Additionally, the deflector may be molded from a variety of plastics, such as polypropylene, polyethylene...or the like," column 3, lines 41-45) [claim 14].
- b. The combination renders the claimed method steps obvious since such would be the logical manner of using the combination [claim 23].

23. Claims 15, 16, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kosar (U.S. Patent No. 4,391,068) in view of Hickner (U.S. Patent No. 5,675,939) as applied to claims 10-14 and 21-23 above, and further in view of Hunter (U.S. Patent No. 5,894,697).

24. Regarding claims 15 and 16:

- a. Kosar in view of Hickner discloses a flashing assembly as set forth above [claims 10-14 and 21-23].
- b. Kosar in view of Hickner does not expressly disclose a stop extending between the first and second flanges forming a channel with the roof portion [claim 15], or that the stop is smaller than the roof portion and disposed between about ¼ to 1 inch from the roof portion [claim 16].
- c. Hunter discloses a stop extending between the first and second flanges forming a channel with the roof portion ("double-crimp lip guide" 15, Fig. 2C) [claim 15], or that the stop is smaller than the roof portion and disposed between about ¼ to 1 inch from the roof portion ("double-crimp lip guide" 15, Fig. 2C; "There is a longitudinal double-crimp lip guide 15 in the vertical

portion 12' approximately one inch above the juncture 11' with vertical portion 12'," column 2, lines 62-64) [claim 16]. Adding a stop as taught by Hunter provides a channel for water to flow through, and blocks debris from falling into said channel.

- d. Kosar, Hickner, and Hunter are analogous art because all are from the field of endeavor of roof flashings.
 - e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the water deflector of Kosar in view of Hickner with a stop as taught by Hunter in order to provide a channel for water to flow through that is protected from falling debris.
25. Regarding claim 24, the combination renders the claimed method steps obvious since such would be the logical manner of using the combination.
26. Claims 10, 17-19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Givens (U.S. Patent No. 6,681,530) in view of Hickner (U.S. Patent No. 5,675,939).
27. Regarding claim 10:
- a. Givens discloses a flashing as set forth above [claims 1, 7, and 8].
 - b. Givens does not expressly disclose a roof portion disposed against a roof, a vertical wall, a roof interfacing with the wall, or that one wall of the flashing is disposed against a vertical wall.
 - c. Hickner discloses a roof portion disposed against a roof ("diverter" 34, Fig. 6), a vertical wall (wall with "siding" 31, Fig. 6), a roof interfacing with the wall

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(roof with "shingle material" 30, Fig. 6), and a flashing with one flange disposed against the vertical wall ("diverter" 34, Fig. 6). Positioning the flashing of Givens at the interface of a vertical wall and sloped roof as taught by Hickner prevents water from leaking between the two structures.

- d. The examiner further notes motivation for combining the references as set forth in Hickner: "At the juncture of a sloped roof where it abuts a portion of a vertical wall, there is ordinarily a flashing used to cover the juncture to prevent water from leaking down through the juncture where the vertical wall meets the sloped roof" (column 1, lines 10-14).
 - e. Kosar and Hickner are analogous art because both are from the field of endeavor of roof flashings.
 - f. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the of water deflector of Kosar at the intersection of a vertical wall and sloped roof as taught by Hickner, in order to prevent water from leaking between the two structures.
28. Regarding claim 17, Givens further discloses a roof portion defining edges opposite the first and second flanges at an angle equal to the obtuse angle of the flanges (angle of "panel" 73, Fig. 3).
29. Regarding claim 18, Givens further discloses first and second flanges that are substantially equal in size such that the flashing is substantially symmetric about a plane bisecting the obtuse angle ("panels" 71 and 72, Fig. 3).
30. Regarding claims 19 and 25:

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- a. Givens further discloses a flashing structure that defines an edge of the roof portion corresponding to an edge of the roof, and an edge where the two flanges intersect corresponding to an edge on the wall ("edge," examiner amended Fig. 3 and "line of intersection" 74, Fig. 3) [claim 19].
- b. The combination renders the claimed method steps obvious since such would be the logical manner of using the combination [claim 25].

31. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kosar (U.S. Patent No. 4,391,068) in view of Hickner (U.S. Patent No. 5,675,939) as applied to claims 10-14 and 21-23 above, and further in view of Givens (U.S. Patent No. 6,681,530).

- a. Kosar in view of Hickner discloses a flashing assembly as set forth above [claims 10-14 and 21-23].
- b. Kosar in view of Hickner does not expressly disclose that the water deflector first and second flanges are at least about 3 inches high.
- c. Givens discloses a flashing with a 3 inch high flange ("panel" 73, Fig. 3; "The dimension of [panel 73] is about 3" from the line of intersection 75 and about 3" from the line of intersection 76," column 8, lines 49-53). Sizing the flanges of Kosar to about 3 inches as taught by Givens provides a flange high enough to protect the adjacent wall from damage caused by running water.
- d. Kosar, Hickner, and Givens are analogous art because all are from the field of endeavor of roof flashings.

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- e. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to manufacture the flanges of Kosar in view of Hickner with a height of 3 inches as taught by Givens, in order to provide maximum protection to the underlying wall with minimum aesthetic detriment.

Conclusion

- 32. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Branon C. Painter whose telephone number is (571) 270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Victor Batson can be reached on (571) 272-6987. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor Batson
Supervisory Patent Examiner
Art Unit 3609

Branon Painter
07/24/2007